

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TIMOTHY L. COLLINS,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, *et al.*,

Defendants.

Case No. C07-0289RSL

ORDER GRANTING  
MOTION TO DISMISS

**I. INTRODUCTION**

This matter comes before the Court on a motion filed by the United States of America (the “United States”) to dismiss this action with prejudice for lack of subject matter jurisdiction, lack of personal jurisdiction, and insufficiency of service of process pursuant to Federal Rule of Civil Procedure 12. Plaintiff, who is appearing *pro se*, opposes the motion.<sup>1</sup>

**II. DISCUSSION**

Plaintiff filed this action on January 25, 2007 in King County District Court. Defendants removed the action to this Court on February 22, 2007. According to plaintiff, he is seeking “a declaratory judgment and injunctive relief by the abatement of a fraudulent ‘Notice of Federal

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<sup>1</sup> Because the Court finds that this matter can be decided on the parties’ memoranda and plaintiff’s exhibits, plaintiff’s request for a hearing is denied.

1 Tax Lien.” Plaintiff’s Opposition at p. 5.

2 The United States argues that the two named defendants, the Internal Revenue Service  
3 (“IRS”) and Revenue Officer P. Blackard are not proper parties to this action. The United States  
4 contends and has provided authority to show that the IRS, as a division of the Treasury  
5 Department, is an agency of the United States. Although plaintiff denies that the IRS is an  
6 agency of the United States, applicable authority does not support his argument. The IRS is  
7 therefore protected by sovereign immunity and cannot be sued absent Congressional  
8 authorization, which has not occurred. Accordingly, the IRS is not a proper party to this suit.  
9 Similarly, defendant Blackard is protected by sovereign immunity and is not a proper party to  
10 this suit. The Court therefore dismisses without prejudice plaintiff’s claims against the IRS and  
11 P. Blackard.

12 Moreover, the United States is the only proper party to this action. Therefore, the United  
13 States is substituted as the defendant.

14 Plaintiff’s claims against the United States must be dismissed for several reasons. First,  
15 plaintiff has not served the United States, the IRS, or defendant Blackard as required by Federal  
16 Rule of Civil Procedure 4. Second, because of the insufficiency of service of process, the Court  
17 also lacks personal jurisdiction over the United States. Third, the Court lacks subject matter  
18 jurisdiction. The United States is not amenable to suit absent a waiver of its sovereign  
19 immunity. Furthermore, although the United States’ motion clearly set forth the basis on which  
20 dismissal was sought, plaintiff still has not served the United States or sought additional time to  
21 do so. Nor has he alleged any basis for subject matter jurisdiction or for a waiver of sovereign  
22 immunity. Accordingly, dismissal is warranted for insufficiency of service of process, lack of  
23 personal jurisdiction, and lack of subject matter jurisdiction. Although the United States  
24 requests that the Court dismiss plaintiff’s claims with prejudice, it has not shown a basis for  
25 doing so.

26 Finally, plaintiff’s opposition to the United States’ motion requests that the Court remand  
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1 this case to state court.<sup>2</sup> The Court denies the request because all requests for relief must be  
2 contained in a motion that complies with Local Rule 7, which plaintiff's response does not. Fed.  
3 R. Civ. P. 7(b)(1), Local Rule 7. Even if the request were construed as a motion, it would be  
4 denied because this case was properly removed pursuant to 28 U.S.C. § 1442(a)(1).

### 5 **III. CONCLUSION**

6 For all of the foregoing reasons, the Court GRANTS the United States' motion to dismiss  
7 (Dkt. #2) and dismisses plaintiff's claims without prejudice.

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9 DATED this 23rd day of April, 2007.

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12 Robert S. Lasnik  
13 United States District Judge  
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26 <sup>2</sup> Plaintiff requests remand based on fraud pursuant to Federal Rule of Civil Procedure  
27 60(b)(3). That rule does not apply because there has been no judgment entered in this case.